

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

KEVIN J. PAUL, SR. AND GLORIA
BYNES,

Plaintiffs,

v.

CHEDDAR'S SCRATCH KITCHEN and
DARDEN RESTAURANT, INC.,

Defendants.

CIVIL ACTION NO.: 4:20-cv-4

ORDER

After a careful *de novo* review of the entire record, the Court concurs with the Magistrate Judge's March 30, 2020, Report and Recommendation, (doc. 11), to which Plaintiffs have filed what the Court construes as a motion to amend. (Doc. 15). This motion attempts to reframe the claims under 42 U.S.C. §§ 1981 and 1983, (*Id.* at 1); however, neither is viable.¹ As defendants were not acting under color of state law, they are not subject to suit under Section 1983. *See Pugh v. Balish*, 564 F. App'x 1010, 1011 (11th Cir. 2014) ("To prevail on a civil rights action under § 1983, a plaintiff must show that he was deprived of a federal right by a person acting under color of state law."). Any amendment to add such a claim would, therefore, be frivolous. *See Wooden v. Armenteros*, 756 F. App'x 951, 953 (11th Cir. 2018) ("Leave to amend need not be granted when amendment would be futile."). The Court has already addressed potential claims under Section 1981 and found that the pleadings lack any allegations of discriminatory intent. (Doc. 12

¹ The Court previously invited plaintiffs to amend their Complaint to include claims under 42 U.S.C. § 1983, (doc. 9 at 3, n. 3). Despite this encouragement, plaintiffs neglected to raise such a claim in their Amended Complaint, (doc. 10).

at 15). Rather than clarify or supplement the allegations, plaintiffs have presented a laundry list of discovery requests. (Doc. 15 at 2). They cannot rely on the discovery process to revive a defective claim. Ultimately, plaintiffs have failed to substantively object to the findings of the Magistrate Judge's Report and Recommendation or satisfactorily address any of the deficiencies identified therein.

Accordingly, the Court **ADOPTS** the Report and Recommendation, (doc. 12), as the opinion of the Court and **DISMISSES** Plaintiff's Complaint **WITHOUT PREJUDICE**. The Court **DIRECTS** the Clerk of Court to **CLOSE** this case.

SO ORDERED, this 21st day of May, 2020.



R. STAN BAKER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF GEORGIA